

ORIGINAL

State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Agustin Hernandez Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1713 Bar # 161625	Case Number(s): 12-O-13324 12-O-17030	For Court use only FILED JAN 16 2013 <i>AC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent James Lynn Bauchert 22421 Barton Rd., #156 Grand Terrace, CA 92313 (909) 799-9592 Bar # 170174	PUBLIC MATTER Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: James Lynn Bauchert Bar # 170174 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:



- (1) Respondent is a member of the State Bar of California, admitted June 2, 1994.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 14 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 11.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(Do not write above this line.)

- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See page 11.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances

None.

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

(Do not write above this line.)

Additional mitigating circumstances

See pages 11 through 12.

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D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of one (1) year.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(Do not write above this line.)

- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason: .

- (2) ☐ **Other Conditions:**

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In the Matter of: James Lynn Bauchert	Case Number(s): 12-O-13324; 12-O-17030
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Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Mariela Miotto and Dr. Eduardo D. Lam (jointly)	\$5,000	August 1, 2012

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than six (6) months after the effective date of discipline.

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: James Lynn Bauchert

CASE NUMBER(S): 12-O-13324; 12-O-17030

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-13324 (Complainant: Wilhelmina Tosh)

FACTS:

1. On January 26, 2012, Wilhelmina Tosh ("Tosh") hired Respondent to file a marital dissolution petition for her on or before February 24, 2012. At the time Tosh employed Respondent, she told him that the petition for dissolution had to be filed on or before February 24, 2012. Respondent understood the importance to Tosh of filing the petition by this date and agreed to file it by February 24, 2012. Tosh paid Respondent a \$3,000 advanced fee.
2. By February 24, 2012, Respondent had not filed a dissolution petition for Tosh. At no time did Respondent perform any services of value on behalf of Tosh. Respondent did not earn any portion of the \$3,000 advanced fee that Tosh paid him.
3. On February 25, 2012, Tosh sent an email to Respondent terminating his employment and requested a full refund of unearned fees and the return of her file. Respondent received Tosh's email but failed to refund any portion of the unearned fees to Tosh and failed to return her client file.
4. Again, on March 4, 2012, Tosh sent an email to Respondent terminating his employment and requested a full refund of unearned fees and the return of her file. Respondent received Tosh's second email but failed to refund any portion of the unearned fees, failed to return her client file, and failed to provide her with an accounting of the \$3,000 she paid him in advanced fees.
5. On March 28, 2012, Tosh made a complaint to the State Bar against Respondent ("Tosh Complaint"). On April 13, 2012, the State Bar opened an investigation of the Tosh Complaint. On July 6, 2012, a State Bar Investigator sent a letter to Respondent requesting that Respondent provide a written response to the Tosh Complaint by no later than July 20, 2012. On July 27, 2012, after not having received a written response from Respondent, the State Bar Investigator sent Respondent another letter requesting that he provide a written response to the Tosh Complaint by no later than August 9, 2012. On August 9, 2012, Respondent requested an extension to provide a written response to the Tosh Complaint,

which the State Bar granted. On August 21, 2012, after still not receiving a written response from Respondent to the Tosh Complaint, the State Bar sent another letter granting him another extension until August 31, 2012. Despite receiving these letters from the State Bar Investigator, at no time did Respondent provide a written response to the State Bar regarding the Tosh Complaint.

6. In November 2012, Respondent refunded to Tosh the \$3,000 in advanced fees that she had paid him, and returned her client file.

CONCLUSIONS OF LAW:

7. By not filing a dissolution petition on or before February 24, 2012 and by otherwise not performing any services of value for Tosh, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
8. By not refunding to Tosh the \$2,500 in unearned fees for nine (9) months and not until the State Bar got involved, Respondent failed to refund promptly any part of a fee paid in advanced that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).
9. By not releasing Tosh's file to her for nine (9) months and not until the State Bar got involved, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).
10. By not providing a written response to the Tosh complaint, and by otherwise not cooperating with the State Bar investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 12-O-17030 (Complainant: Mariela Miotto)

FACTS:

11. In June 2012, Mariela Miotto ("Miotto") hired Respondent to represent her in her pending dissolution matter entitled *In Re Marriage of Lam*, Riverside County Superior Court, case no. RID179996.
12. On July 3, 2012, Respondent attended an order to show cause hearing re: modification of child custody, visitation and support, and spousal support on behalf of Miotto ("OSC"). On this date prior to the OSC commencing, Miotto and her ex-husband, Eduardo D. Lam ("Lam"), reached a settlement agreement in the court hallway without any involvement from Respondent. At the time of the OSC hearing, Respondent filed a stipulation with the Court that was signed by both Lam and Miotto, and approved by the Court.
13. As part of the stipulation, Lam agreed to pay Respondent \$5,000 in advanced fees to prepare final orders on spousal support, child support, child custody and visitation, property

distribution, the distribution of Lam's pension, and final judgments, on behalf of Lam and Miotto.

14. In August 2012, Lam paid Respondent \$5,000. After receiving the payment, Respondent failed to perform any legal services in furtherance of completing the marital dissolution matter on behalf of Miotto and Lam. Respondent failed to perform any legal services of value on behalf of Miotto and Lam after July 3, 2012.
15. Respondent did not earn any portion of the \$5,000 in advanced fees that he was paid to complete the marital dissolution matter on behalf of Miotto and Lam.
16. On September 11, 2012, Miotto terminated Respondent's employment and requested a refund of the \$5,000 in unearned fees, and that Respondent sign a substitution of attorney so that Miotto could represent herself in pro per. Respondent did not provide a refund of unearned fees, but did send Miotto the executed substitution of attorney.
17. To date, Respondent has not refunded the \$5,000 in unearned fees.

CONCLUSIONS OF LAW:

18. By not completing the dissolution matter on behalf of Miotto and Lam, and by failing to provide any legal services of value to them, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
19. By not refunding to Miotto and Lam the \$5,000 in unearned fees, Respondent failed to refund promptly any part of a fee paid in advanced that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Respondent received \$3,000 in advanced fees from Tosh and \$5,000 in advanced fees from Lam and Miotto. After receiving such payments, Respondent performed no legal services of value for Tosh, or Lam and Miotto. Though Respondent has refunded Tosh in full, the refund was tardy and only made after Tosh filed a complaint with the State Bar. To date, Respondent has not refunded Lam and Miotto. Respondent's misconduct has caused significant harm to his clients, which constitutes an aggravating circumstance. (See Standard 1.2(b)(iv).)

Multiple Acts of Wrongdoing: Respondent's current misconduct evidences multiple acts of wrongdoing, as described above, which have resulted in seven distinct violations of the Rules of Professional Conduct and Business and Professions Code in two client matters, constituting an aggravating circumstance. (See Standard 1.2(b)(ii); *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although Respondent's current misconduct is serious, at the time of the misconduct, Respondent had more than 18 years of practice without discipline, which is

entitled to substantial mitigation. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [attorney with seventeen years of discipline-free practice entitled to mitigation despite serious misconduct].)

Acknowledgment of Wrongdoing: In discussions with the State Bar, Respondent admitted that his conduct was wrong and has accepted fault. Respondent has also refunded and made amends with Tosh. Respondent's acknowledgment of wrongdoing entitles him to some mitigation. (See Standard 1.2(e)(vii); *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519.)

Physical Disability: Respondent has been receiving medical treatment for his uncontrolled diabetes since December 2011. At the beginning of 2012, Respondent had severe uncontrolled diabetes, with average sugar levels over 300. Respondent's uncontrolled diabetes caused extreme lethargy, an inability to concentrate, dehydration, fatigue and confusion. Respondent's uncontrolled diabetes contributed to the misconduct. (See Standard 1.2(e)(iv).)

Cooperation with State Bar: Additionally, Respondent has cooperated with the State Bar by entering into a stipulated settlement for the matter described herein at an early stage without the need of a trial to resolve this matter. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigative credit given where attorney admitted facts and culpability in order to simplify the disciplinary proceedings].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing seven acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.10 which provides that culpability of a member in violation of any provision of the Business and Professions Code or any Rule of Professional Conduct not otherwise specified in the standards shall result in reproof or

suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. The appropriate sanction for a violation of Rules of Professional Conduct, rule 3-700(D)(2) is not otherwise specified. Therefore, standard 2.10 applies to Respondent's failure to promptly refund unearned fees in two client matters, in violation of Rules of Professional Conduct, rule 3-700(D)(2). Since Tosh, and Miotto and Lam, were financially harmed by Respondent's failure to promptly refund unearned fees to them, neither public nor private reproof would be sufficient discipline in this case.

In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the court found that the attorney was culpable of failing to perform, failing to refund unearned fees, and failing to cooperate with a State Bar investigation. In particular, the attorney was retained and paid \$3,000 in advanced fees to file a dissolution petition. For two and a half years, the attorney failed to communicate with his client, perform any work for his client, or refund unearned fees to his client. The court determined that a 30-day actual suspension was an appropriate level of discipline, finding in mitigation Bach's lack of prior record of discipline for twenty years, but finding in aggravation the attorney's "feckless suggestion" to the court that additional mitigating factors existed and his "lack of insight into the deficiencies of his professional behavior." (*Id.* at 1208.)

While Respondent's misconduct here concerned a failure to refund a greater amount of unearned fees than in *Bach*, the extent of Respondent's misconduct is less. He has been more cooperative and responsive than Bach was in so far as Respondent has cooperated with the State Bar by agreeing to stipulate to the discipline at an early stage in the disciplinary proceedings, he has already refunded one client in full and, unlike Bach, Respondent has shown remorse and acknowledged his wrongdoing. Additionally, Respondent's misconduct here took place over the course of one year, which is much shorter than the two and a half years of misconduct in *Bach*. Moreover, Respondent's mitigating factors are much stronger here because not only does Respondent have a discipline-free record for over 18 years, like Bach, but he also had a physical disability which entitles him to even stronger mitigation. Unlike in *Bach*, where the mitigation was equal to or outweighed by the aggravation, here Respondent's mitigation clearly outweighs any aggravation. Therefore, the instant discipline for Respondent's misconduct should be less severe than in *Bach*.

Accordingly, a one (1) year stayed suspension and one (1) year probation with conditions, including no actual suspension, is an appropriate level of discipline for Respondent's misconduct described herein.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was on December 17, 2012.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School or any other educational courses to be ordered as a condition of suspension (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: James Lynn Bauchert	Case number(s): 12-O-13324; 12-O-17030
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

December <u>26</u> , 2012		James Lynn Bauchert
Date	Respondent's Signature	Print Name
Date	Respondent's Counsel Signature	Print Name
December <u>16</u> , 2012		Agustin Hernandez
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: James Lynn Bauchert	Case Number(s): 12-O-13325 (12-O-17030)
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STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:


- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

On page 10, numbered paragraph 8 under the heading "Conclusions of Law", change "\$2,500" to "\$3,000".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

1-11-13


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 16, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

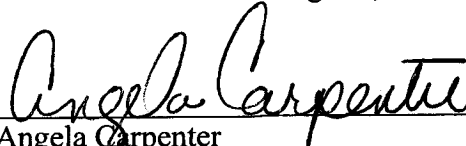
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES LYNN BAUCHERT
22421 BARTON RD., #156
GRAND TERRACE, CA 92313

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 16, 2013.



Angela Carpenter
Case Administrator
State Bar Court